



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0479; FRL-11425-02-R9]

Determination to Defer Sanctions; California; California Air Resources Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a rule and other materials that correct deficiencies in its Clean Air Act (CAA or “Act”) state implementation plan (SIP) provisions concerning emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. This determination is based on a proposed approval, published elsewhere in this *Federal Register*, of CARB’s California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 (“Section 94014”) which regulates this source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous limited disapproval by the EPA in 2022 is now deferred. If the EPA finalizes its approval of CARB’s submission, relief from these sanctions will become permanent.

DATES: This interim final determination is effective November 2, 2023. However, comments will be accepted on or before December 4, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0479 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 942-3245 or by email at evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Background
- II. The EPA’s Evaluation and Action
- III. Statutory and Executive Order Reviews

I. Background

On April 5, 2022 (87 FR 19631), the EPA issued a final limited approval and limited disapproval action for the CARB rule listed in Table 1 that was submitted to the EPA for inclusion into the California SIP. The action addressed the procedures CARB uses to certify vapor recovery systems on cargo tank trucks used to transport gasoline from bulk terminals to gasoline dispensing facilities.

Table 1—CARB Rule With Previous EPA Action

Regulation or Provision	Regulation title or Subject	Amended	Submitted	EPA action in 2022
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014	Certification of Vapor Recovery Systems for Cargo Tanks	07/25/2013	08/22/2018	Limited Approval and Limited Disapproval

In the April 5, 2022 final rule, we determined that although the CARB regulation strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule included a deficiency that precluded our full approval of the rule into the SIP. CARB’s previously submitted Section 94014 incorporated by reference Certification Procedure CP-204 (“CP-204”) that allowed for CARB’s Executive Officer to approve alternate test procedures without EPA approval. The EPA found that this provision was an instance of unbounded director’s discretion. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52, the disapproval action on CP-204 under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of November 5, 2023, and highway sanctions 6 months later.

On July 12, 2023, the CARB revised Section 94014 and CP-204, and on September 13, 2023, submitted it to the EPA for approval into the California SIP as shown in Table 2 below.

Regulation or Provision	Regulation title or Subject	Amended	Submitted
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8,	Certification of Vapor Recovery Systems for Cargo Tanks	07/12/23 ¹	09/13/23

¹ The California Air Resources Board amended the introductory paragraph of 17 California Code of Regulations Section 94014 on July 12, 2023, and the changed was filed with Thomson Reuters Westlaw on August 29, 2023. Therefore, the amendment for Section 94014 will be recorded as July 12, 2023.

Article 1, Section 94014, excluding sub-sections (a) – (d)			
Certification Procedure CP-204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks	07/12/23	09/13/23

On September 25, 2023, the Submittal was determined to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

The revised CARB section 94014 and CP-204 in Table 2 is intended to address the disapproval issues in our April 5, 2022 final rule. Based on this proposed action approving Section 94014 and CP-204 into the California SIP, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our final action on April 5, 2022, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed approval of CARB Section 94014 and CP-204, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our final action on April 5, 2022, would be permanently terminated on the effective date of our final approval of Section 94014 and CP-204.

II. The EPA’s Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on April 5, 2022, of CARB’s section 94014 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve CARB Section 94014 which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that CARB Section 94014 and CP-204, amended on July 12, 2023, address the limited disapproval issues under part D of title I of the CAA identified in our 2022 final action and the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on Tribal Governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair

treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2023-23608 Filed: 11/1/2023 8:45 am; Publication Date: 11/2/2023]